

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE.**

WRIT PETITION NO. 6442 OF 2006.

Anand Shivram Malusare & ors. ... Petitioners.
V/s.
Laxmibai J. Sabunkar & anr. ... Respondents.

Shri Y.S. Jahagirdar, Senior Counsel with Shri P.J.
Shinde for the petitioner.

Shri A.M. Ranpise for the respondents.

CORAM : V.C.DAGA, J.

DATED : 29.9.2006.

P.C. :

. This petition is directed against the order dated 30.6.2006, passed by the Bench of the Small Causes Court at Bombay, in Appeal No. 850 of 2003 whereby appeal came to be dismissed and order dated 26.9.2003 passed by the trial Court came to be confirmed.

FACTS:

2. The subject matter involved in this case a tenanted premises bearing Room Nos. 1, 2 and 2A on the ground floor of the building situated at 4-6, Kamathipura, 7th Lane, Mumbai-400 008.

3. The respondent-original plaintiff let out the suit premises to the petitioner-Defendant No.1 on monthly tenancy basis. The monthly rent of Room

No. 1 & 2 is Rs. 197.76 and that of Room No.2A is Rs. 21.72, for which two separate rent receipts are being issued in the name of defendant No.1.

4. The respondents-plaintiffs filed suit against defendant No.1 for eviction on the ground of change of user and acquisition of alternate accommodation being Room No.4 on the 2nd floor of the building situated at 95/97, Kamathipura, 7th Lane, Mumbai. The plaintiffs impleaded first first defendant's real brothers as defendant Nos. 2 & 3 alleging that the defendant No.1 had unlawfully sublet the suit premises to them and pleaded that the defendant No.1 has acquired suitable accommodation in December 1997, at G.D. Ambekar Road, Parel, Mumbai.

5. On being summoned, defendant No.1 appeared and filed his written statements resisting the suit claim set up by the plaintiffs denying almost all the grounds set in motion.

6. Defendant Nos. 2 and 3 also filed their separate written statement and thereby adopted the contents of the written statement filed by defendant No.1.

7. The trial Court framed issues based on the

pleadings of the rival parties.

8. Plaintiff led evidence and also produced as many as 28 documents which came to be exhibited by the trial Court; tentatively, observing that admissibility of all these documents would be decided at the time of arguments.

9. The trial Court recorded evidence of parties and, ultimately, on appreciation of the evidence decreed the suit in favour of the plaintiffs and directed the plaintiffs to vacate the suit premises within 3 months and further directed to pay mesne profits @ Rs. 215/- p.m. by judgment and order dated 26.9.2003.

10. Being aggrieved by the aforesaid judgment and order petitioners-defendants filed appeal to the Appellate Bench of the Small Causes Court, Bombay, and challenged the decree of the trial Court. The lower appellate Court confirmed the decree of the trial Court to the extent of ground of eviction on the ground of acquisition of alternate accommodation at Parel and dismissed the appeal on other grounds.

11. Being aggrieved by the aforesaid judgment and order, the petitioners have filed this petition under Article 227 of the Constitution of India.

Submissions and consideration:

12. Heard Learned Counsel appearing for the petitioner. It is not in dispute that the petitioner has acquired premises under a registered sale deed dated 23.7.2006 at Flat No. 32, 2nd floor, Shant Kiran Co-operative Housing Society, admeasuring 250 sq.ft.; 300 sq.ft. built up area, situate at Parel, Mumbai.

13. The only contention raised on behalf of the petitioner is that the suit premises is not suitable or alternate to the tenanted premises. However, no such contentions were either raised in the pleadings or any evidence which was produced on record of the trial Court.

14. At this stage, it will not be out of place to mention that the Apex Court in the case of **Ganpat Ram Sharma and ors vs. Smt. Gayatri Devi AIR 1987 SC 2016**, ruled that it is essential to incorporate pleadings seeking eviction it is essential that the ingredients must be pleaded by the landlord who seeks eviction but after the landlord has proved or stated that the tenant has built, acquired vacant possession or has been allotted a residence, whether it is suitable or not and whether the same can be

really an alternative accommodation for the tenant or not, are within the special knowledge of the tenant and he must prove and establish those facts. Thus, considering this law laid down by the Apex Court the petitioner-tenants have failed to discharge their burden.

15. Having considered the fact that the petitioners have acquired alternate accommodation under registered document having an area of about 250 sq.ft 300 sq.ft. (built up area), comparing of existing area of tenanted block admeasuring 236 sq.ft, it is not possible to say that the premises acquired by the petitioners is not suitable or alternate accommodation. In this view of the matter, petition is without any substance and the same is liable to be dismissed.

16. Having said so, it is necessary to take note of the judgment of the Apex Court in the case of **Laxmikant Revchand Bhojwani & anr. vs. Pratapsingh Mohansingh Pardeshi (1995) 6 SCC 576**, in para 9, before considering rival submissions, wherein following observations were made:

" Before parting with this judgment, we would like to say that the High Court was not justified in extending its jurisdiction under Article 227 of the Constitution of

India. The Act is a special legislation governing landlord-tenant relationship and disputes. The legislature has, in its wisdom, not provided second appeal or revision to the High Court. The object is to give finality to the decision of the appellate authority. The High Court under Article 227 of the Constitution of India cannot assume unlimited prerogative to correct all species of hardship or wrong decisions. It must be restricted to cases of grave dereliction of duty and flagrant abuse of fundamental principles of law or justice, where grave injustice would be done unless the High Court interferes."

17. Bearing in mind the above observations of the Apex Court and considering concurrent finding of fact recorded by the Courts below, it is very difficult to reach to the conclusion that the impugned order is a perverse order. Cogent reasons are given by the lower appellate Court while confirming the findings of fact recorded by the authority. The lower appellate Court appreciated evidence and recorded findings of fact and affirmed the findings of facts recorded by the first authority. No case is made out either in the petition or during the course of hearing to demonstrate that any piece of evidence was not taken into account by the Courts below or that any piece of evidence was misconstrued by the lower appellate authority.

11. At this stage, Shri Jahagirdar prayed for stay of this order for a period of eight weeks from today for approaching higher Court. Learned Counsel

for the respondent has no objection. Accordingly, petitioner is granted eight weeks time to vacate the suit premises, on filing undertaking to this Court within one week from today, to the effect that in the event of their failing before the higher they shall vacate and hand over vacant and peaceful possession of the suit premises to the respondent without any obstruction. Undertaking should be signed by all the adult members of the family occupying said premises.

12. In the above view of the matter, petition is without any substance. The same is liable to be dismissed.

13. In the result, petition is dismissed in limine with no order as to costs.

(V.C.DAGA,J.)